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6/29/01**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Anderson et al.  
Appl. No. : 09/663,963  
Filed : 09/19/00  
Title : IMPROVED FERMENTATION PROCESS

Grp./A.U. : 1651  
Examiner : K. Srivastava

Docket No. : M6560 OS/OAPT

**FAX RECEIVED****CERTIFICATION OF FACSIMILE TRANSMISSION****JUN 27 2001**

I hereby certify that this paper is being facsimile transmitted to the Assistant Commissioner for Patents on the date shown below.

**GROUP 1600**

June 27, 2001  
Date

Marlene Capreni  
Signature of certifier

Marlene Capreni  
Typed or printed name of certifier

Commissioner for Patents  
Washington, DC 20231

**SUPPLEMENTAL RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This paper is in response to the Examiner's communication dated June 8, 2001 in the present application.

The Examiner has indicated that Applicant's reply to Paper Number 8, filed on May 8, 2001 was not fully responsive on the grounds that Applicant failed to elect a single composition of culture medium from among numerous different ingredients, focusing specifically on claim 1(d).

Pursuant to a telephone interview between Examiner Francisco Prats and his supervisor, Michael G. Wityshyn, Applicant was informed that in order to be responsive to the previously sent restriction requirement, Applicant must choose both a particular

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group of metals from claim 1(d), **AND** a particular source of inorganic nitrogen from claims 3-5.

In response to this communication, Applicant would like to make the following observations:

(1) Applicant fails to see where in the previously sent restriction requirement the Examiner identifies the various species from which Applicant is required to elect a single species;

(2) in Paper No. 6, page 3, the Examiner contends that the inventions of Groups I-III are distinct as evidenced by the different classification, however, upon a careful reading of the Examiner's restriction requirement, it is **CLEARLY** seen that all three groups of claims are found in the **SAME CLASS**;

(3) the Examiner has failed to satisfy his burden with respect to the restriction requirement since MPEP § 803.02 states that restriction/election of a Markush-group is proper "...where two or more of the members are so unrelated and diverse that a prior art reference anticipating the claim with respect to one of the members would not render the claim obvious under 35 U.S.C. §103 with respect to the other member(s).", and the Examiner has failed to make any showing that the members of Applicant's Markush-group are in fact so unrelated; and

(4) the Examiner has failed to show that the members of the Markush group **DO NOT** (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility, see MPEP §803.02.

Applicant respectfully submits that **NONE OF THE REQUIREMENTS** necessary for establishing a restriction/election requirement pursuant to MPEP section 803 have been met by the Examiner and, as a result, said requirement is **WOEFULLY IMPROPER**.

The requirement is thus **AGAIN** respectfully traversed and reconsideration is

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requested. However, in order to comply with the requirement of Rule 142 prior to Applicant's filing of a petition to the Commissioner requesting the restriction/election requirement be withdrawn, Applicant is provisionally electing ammonium sulfate as the inorganic source of nitrogen which reads on claims 1-3 and 6-12, and calcium as the at least one metal which reads on claims 1-3, 6-7 and 10-12, with traverse, for further examination on the merits.

It is believed that the foregoing reply is completely responsive under 37 CFR §1.111 and that all grounds for rejection are completely avoided and/or overcome. A Notice of Allowance is therefore earnestly requested.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,



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